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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,487	05/24/2001	James W. O'Toole JR.	CIS00-3138	2984

7590 12/01/2004

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EXAMINER

LE, HIEU C

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,487

Applicant(s)

O'TOOLE ET AL.

Examiner

Hieu c. Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 1, 10, 20 and 21 is/are rejected.
- 7) ☒ Claim(s) 2-9, 11-19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 10, 20-21 are rejected under 35 .S.C. 102(e) as anticipated by Lipa et al. [US.Pat.No. 6,061,722] .

As to claim 1, Lipa discloses a method for managing a network of nodes, the steps comprising:

requesting an initial set of network metrics for an initial subset of nodes in the network of nodes based on a connecting node attempting to establish a relationship with a target node of the initial subset, each network metric of the initial set associated with a respective node from the initial subset [front end 123 of a user request connection to lobby list server 102, a list of zone rating information for the quality of network connections (an anitial set of network metrics) for zones (an anitial set of nodes) based on a user (connecting node) attempting to access a server (target node) in one of the zones listed in the list of zones, the metrics are latency, bandwidth (col. 6, line 56-col. 7, line 27)] and measuring a performance aspect of the respective node relative to the network (col. 7, lines 1-28), receiving the initial set of the network metrics for the initial subset of nodes (col. 7, lines 38-42) and establishing the relationship between

the connecting node and the target node of the initial subset based on a comparison of the network metrics in the initial set (col. 7, lines 51-67).

As to claim 10, refer to claim 1 rejection. Lipa further discloses a computer system for managing a network of nodes, the computer system comprising:

a memory (Fig. 1, item 122);
a network interface in communication with the memory ; and
a processor in communication with the memory and the network interface,
wherein the memory is encoded with logic instructions for a network manager application (col. 3, lines 48-58).

As to claim 20, refer to claim 1 rejection. Lipa further discloses a computer program product (Fig. 1).

As to claim 21, refer to claim 1 rejection.

Claim 22 is allowed.

Allowable Subject Matter

3. Claims 2-9,11-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

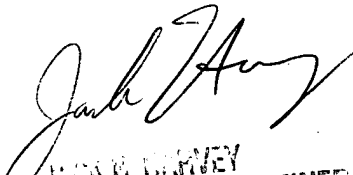
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Le whose telephone number is (571) – 272-3897. The examiner can normally be reached on Monday to Friday from 7:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey, can be reached on (571) 272-3896. The fax phone number for this Group is (571) 272-3896.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Hieu Le


JACK B. HARVEY
SUPERVISORY PATENT EXAMINER